UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/CONF.187/PM.1
22 September 1998

ORIGINAL: ENGLISH

TENTH UNITED NATIONS CONGRESS ON
THE PREVENTION OF CRIME AND
THE TREATMENT OF OFFENDERS
Vienna, 10-17 April 2000

DISCUSSION GUIDE

CONTENTS

		Paragraphs	*Page*
INTRODUCTION		1-6	2
I.	PROMOTING THE RULE OF LAW AND STRENGTHENING THE CRIMINAL JUSTICE SYSTEM	7-19	3
	A. Towards a multilateral and results-oriented approach	11-16	4
	B. Technical assistance in post-conflict reconstruction	17-18	5
	C. Questions for discussion	19	6
II.	INTERNATIONAL COOPERATION IN COMBATING TRANSNATIONAL CRIME: NEW CHALLENGES IN THE TWENTY-FIRST CENTURY	20-33	6
	A. Convention against organized transnational crime	22	6
	B. Action against organized transnational crime	23	7
	C. Extradition and mutual legal assistance	24	7
	D. Other international cooperation and technical assistance	25	7
	E. Measures against specific forms of crime	26-32	8
	F. Questions for discussion	33	9

V.98-56168 (E)

III. EFFECTIVE CRIME PREVENTION: KEEPING PACE WITH NEW DEVELOPMENTS 34-48 10

A. Crimes linked to xenophobia, racism and ethnic conflict 37-39 10
B. New technologies 40-43 11
C. Evaluation of crime-prevention programmes 44-47 12
D. Questions for discussion 48 12

IV. OFFENDERS AND VICTIMS: ACCOUNTABILITY AND FAIRNESS IN THE JUSTICE PROCESS 49-77 13

A. Restorative justice 53-54 13
B. Restorative justice measures in the criminal justice process 55-65 14
C. Fairness to victims and offenders 66-73 15
D. International cooperation on restorative justice 74-76 17
E. Questions for discussion 77 17

INTRODUCTION

1. The quinquennial United Nations congresses on the prevention of crime and the treatment of offenders have been organized since 1955, in pursuance of General Assembly resolution 415 (V) of 1 December 1950. Pursuant to General Assembly resolution 46/152, on the creation of an effective United Nations crime prevention and criminal justice programme, the United Nations congresses, as a consultative body of the programme, are to provide a forum for:

(a) The exchange of views between States, intergovernmental organizations, non-governmental organizations and individual experts representing various professions and disciplines;

(b) The exchange of experiences in research, law and policy development;

(c) The identification of emerging trends and issues in crime prevention and criminal justice;

(d) The provision of advice and comments to the Commission on Crime Prevention and Criminal Justice on selected matters, as requested by the Commission;

(e) The submission of suggestions for the consideration of the Commission regarding possible subjects for the programme of work.

2. The General Assembly, in its resolution 52/91, on the preparations for the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, adopted on the recommendation of the Commission at its sixth session, decided on the substantive items to be included in the provisional agenda for the Tenth Congress, as well as on the topics for the workshops. In the same resolution, the Assembly requested the Secretary-General to prepare a discussion guide for the consideration of the Commission, in cooperation with the institutes for the prevention of crime and the treatment of offenders affiliated with the United Nations, and invited Member States to be actively involved in that process.

3. The items to be included in the provisional agenda of the Tenth Congress, as approved by the General Assembly, are:

(a) Promoting the rule of law and strengthening the criminal justice system;

(b) International cooperation in combating transnational crime: new challenges in the twenty-first century;

(c) Effective crime prevention: keeping pace with new developments;

(d) Offenders and victims: accountability and fairness in the justice process.

4. The issues for the four workshops are:

(a) Combating corruption;

(b) Crime related to the computer networks;

(c) Community involvement in crime prevention;

(d) Women in the criminal justice system.

Further, the Assembly decided to reserve the first two days of the plenary session at the Tenth Congress primarily for statements by representatives at a high political level on the main themes of the Congress, and requested the Secretary-General to prepare an overview of the worldwide state of crime and criminal justice for presentation at the opening of the Congress.

6. The present discussion guide is intended to stimulate discussion of matters of major concern to the international community, with a view to identifying the main policy options for consideration by the Congress.

I. PROMOTING THE RULE OF LAW AND STRENGTHENING THE CRIMINAL JUSTICE SYSTEM

7. In the last decade, many developing States have embarked on constitutional reforms, the creation of new institutions, the promotion of respect for human rights and pluralist elections that support the participation of civil society in governance. At the same time, most eastern European States and some Asian States are experiencing a transition to a market economy. The growing political openness, linked to the trend towards democratization of institutions and liberalization of socio-economic policies, has created a favourable environment for development activities aimed at strengthening the rule of law.

8. With the emergence of new democracies during the 1990s, technical cooperation has focused on good governance—the capacity of Governments to deliver quality public services to their populations and to maintain the rule of law. The criminal justice systems of many countries have experienced great difficulty in dealing with the upsurge of crime in the wake of major political changes and the resulting economic dislocation. The vacuum created by institutional breakdowns and dwindling social controls has allowed organized crime to establish itself, for example, through racketeering, prostitution, drug trafficking, fraudulent schemes and misuse of public funds. Endemic corruption and mismanagement have undermined much development assistance and endangered international investments. The situation has become so critical in a number of countries that the capacity of the government to control crime has become a major test of its viability. As a result, since the early 1990s, the international community, increasingly conscious of the need for a stable legal framework for development, has more systematically incorporated activities focusing on justice and the rule of law in its development assistance.

9. The discussion of this topic should centre on the efforts made to strengthen criminal justice systems and the rule of law under new conditions. The Tenth Congress could serve as a platform for a stocktaking of technical assistance offered at both bilateral and multilateral levels and for identifying the areas where assistance is most needed. It could also offer guidance on the future directions for technical cooperation, while considering the most successful prototype assistance projects for strengthening the rule of law and steps that could be taken to increase the number of such projects.

10. The needs, as expressed by Member States, are many. Very often, developing countries face difficulties in coping with the rapid political and socio-economic changes and increasing sophistication of crime, requesting assistance in the revision or formulation of new legislation. Legal reform, including new penal and procedural codes, ranks high on the list, as does special legislation to deal with particular problems, such as corruption, organized crime, and money-laundering. Many developing countries and States with economies in transition are in need of technical assistance in building or reforming their crime-prevention and criminal justice systems. Because of the lack of funds, government agencies responsible for crime prevention and criminal justice are often understaffed and lack both modern training and appropriate equipment. Assistance is often requested for the improvement of some aspects of criminal justice operations, such as the professionalism of police forces and the independence of the judiciary. Correctional needs include alternatives to overcrowded prisons. Other needs expressed relate to the lack of both material of all kinds and the training to handle specialized equipment. Many States seek advice and assistance in dealing with mounting juvenile delinquency and the treatment of juvenile offenders.

A. Towards a multilateral and results-oriented approach

11. The importance of respect for the rule of law and its role in contributing to sustainable development are recognized by the United Nations as well as other entities and international organizations. In its resolution 46/152, annex, section I, the General Assembly recognized that "democracy and a better quality of life can flourish only in a context of peace and security for all. Crime poses a threat to stability and to a safe environment. Crime prevention and criminal justice, with due regard to the observance of human rights, is thus a direct contribution to the maintenance of peace and security ...". In the same resolution, which represented the culmination of a long process of reviewing the United Nations Crime Prevention and Criminal Justice Programme, the General Assembly encouraged "all developed countries to review their aid programmes in order to ensure that there is a full and proper contribution in the field of criminal justice within the overall context of development priorities".

12. Effective international cooperation in crime prevention and criminal justice depends, in the first instance, on the capacity of the criminal justice system of a given country to deal adequately with the crime problems that exist or are likely to occur. Raising the level of expertise and professionalism of the criminal justice system often requires resources that are lacking in many countries.

13. Among its goals, technical cooperation in crime prevention and criminal justice should lead to the adoption of strategic measures at the national level to curtail mounting problems, such as that of organized crime, as well as to promote effective mechanisms for regional cooperation based on judicial cooperation and police arrangements between States, with an exchange of information and experience in all crime-related areas.

14. International cooperation includes a wide range of activities, such as assistance in updating obsolete criminal codes; drafting and reforming legal provisions on specific issues; the reorganization of key agencies, such as ministries of justice and of the interior, police forces and judiciary and penitentiary institutions; training of criminal justice personnel to improve their technical capacities and upgrade their level of professionalism; mutual assistance in criminal matters; support of computerization programmes; and the protection of, and assistance to, victims of crime and abuse of power.

15. International cooperation and technical assistance in crime prevention and criminal justice is currently being provided bilaterally by Governments and through a number of intergovernmental organizations and international development agencies and funds (for example, the United Nations Development Programme,* the World Bank, the regional development banks, in particular the Inter-American Development Bank, the Commonwealth Secretariat, the Council of Europe and the European Union), as well as through a variety of national and international non-governmental organizations. Within the United Nations Secretariat, in addition to the Centre for International Crime Prevention, several other entities, such as the Department of Peacekeeping Operations, the Department of Economic and Social Affairs, the Office of the United Nations High Commissioner for Human Rights, the United Nations International Drug Control Programme and the regional commissions provide assistance in their respective fields of competence. The United Nations Interregional Crime and Justice Research Institute (UNICRI) and bodies such as the Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, the Latin American Institute for the Prevention of Crime and the Treatment of Offenders, the European Institute for Crime Prevention and Control, affiliated with the United Nations, and the African Institute for the Prevention of Crime and the Treatment of Offenders engage in the collection and dissemination of relevant information, research and training, as well as the promotion of collaborative action with regard to problems of common concern.

16. There are a number of advantages of multilateral assistance, especially when rendered through the United Nations. It provides a unique forum for raising public awareness and building the consensus needed for concerted action. Its neutrality permits the United Nations to develop special relationships of trust with countries and their people and to provide stable, long-term capacity-building assistance free of short-term political or economic advantages or other considerations. Its programming of development assistance according to the needs of the countries concerned and its universal presence, with a network of country and regional offices, enable the United Nations to operate effectively at the country level. Finally, Member States require assistance based on the broadest possible experience and on a range of options, so as to adapt successful solutions to specific national, legal, social and cultural circumstances. Such broad experience and options are generally not available when bilateral assistance is given.

B. Technical assistance in post-conflict reconstruction

17. The experience acquired in the most recent United Nations peacekeeping operations suggests that the criminal justice system is among the institutions that suffer the most in conflict situations. The criminal justice system is often rendered subservient to political power, and when it appears resistant to the attainment of unlawful objectives, it invariably becomes a prime target for dismantlement or destruction. Success in rebuilding a country after external or intra-State conflicts depends largely on the re-establishment of the rule of law, with an adequate level of security for all citizens. The rehabilitation of a criminal justice system capable of ensuring the maintenance of law and order, with due consideration for the protection of civil rights and basic freedoms, has therefore become one of the top priorities.

---

*Among the agencies referred to, UNDP has in recent years pursued policies that emphasize capacity development for effective governance, as a priority means of supporting the goals of poverty eradication, environmental improvement, gender equity and sustainable livelihoods. Particularly relevant, within the framework of UNDP efforts aimed at promoting and supporting good governance, are the activities of the Regional Bureau for Europe and the Commonwealth of Independent States, which implements a regional programme to support the strengthening of democracy, governance and participation. In the early 1990s, UNDP sponsored some reforms of legislative and judicial systems in response to demands from the States concerned. Since 1994, UNDP has devoted a significant portion of its resources to good governance. Over $44 million were allocated to 62 projects in that area; since 1996, such activities have increased substantially.

18. The proscription of violence against persons and, especially, of systematic crimes against humanity needs to be properly enforced. Crimes of a transnational and organized character are most likely to spread in the context of armed conflict during the transition to peace. Without the necessary law enforcement mechanisms and infrastructures, societies subjected to conflicts may become safe havens for criminal organizations, both national and transnational. Unfortunately, lawlessness, banditry, smuggling and victimization of innocents usually accompany war. In addition to the creation of international mechanisms of crime control and criminal justice (war tribunals), it is crucial that national and local criminal justice institutions be made to work, so that justice can be done (and be seen to be done), under the rule of law, while serving also as a means of promoting public confidence and social cohesion. Consideration could be given to indigenous approaches to reconciliation, including the opportunity to use elements of traditional forms of justice.

C. Questions for discussion

19. The regional preparatory meetings may wish to consider the following questions:

(a) What types of technical assistance are needed in crime prevention and criminal justice to promote the rule of law, including in post-conflict reconstruction? How can they be best provided by the United Nations Crime Prevention and Criminal Justice Programme?

(b) On the basis of past experience, what approaches would be successful in establishing the elements of an effective and fair criminal justice system, including the police and the judiciary?

(c) How have the results of technical assistance projects and their impact on the establishment and maintenance of a stable legal framework for crime prevention and criminal justice been evaluated, and how can this evaluation be improved?

II. INTERNATIONAL COOPERATION IN COMBATING TRANSNATIONAL CRIME: NEW CHALLENGES IN THE TWENTY-FIRST CENTURY

20. Recent years have witnessed an increase in transnational crime, which has taken on new characteristics, as reflected particularly in organized transnational crime. The emergence of new forms of transnational alliances between organized criminals calls for an effective response. The interaction between the research and academic environment and political institutions at the national, regional and global levels has started to bear fruit, though still at a slow pace. The need to give practical effect to the achievements of the international community in enacting new laws and regulations designed to combat crime should be pursued, so as to strengthen the rule of law. In particular, the problems arising from transnational organized crime require that legal and criminological expertise be applied to strengthen security, taking into account other needs of human beings and the society at large, with a view to creating better laws and more user-friendly criminal justice institutions.

21. The focus of the Congress should be placed on practical tools and practical forms of cooperation in the prevention and control of contemporary forms of transnational crime. The discussion should seek to identify ways of building up expertise, developing training tools and collecting best practices worldwide. The issues outlined below have been identified as being of particular relevance to the Tenth Congress.

A. Convention against organized transnational crime

22. The General Assembly, in its resolution 51/120, requested the Commission on Crime Prevention and Criminal Justice to consider, as a matter of priority, the question of the elaboration of an international convention against organized transnational crime. The inter-sessional open-ended intergovernmental group of

experts on the elaboration of a preliminary draft of a possible comprehensive international convention against organized transnational crime, in the report of its meeting held at Warsaw from 2 to 6 February 1998, noted the following: "There was a broad consensus on the desirability of such a convention ... There was much to be gained from this international legal instrument, which would not only build on, but also go beyond, other successful efforts to deal with pressing issues of national and international concern ... There was unreserved confirmation of the commitment of the international community to devote priority attention to developing such a convention and ensuring its full implementation" (E/CN.15/1998/5). Further work on the draft convention was carried out by the Commission at its seventh session, and was to be continued at a meeting of the inter-sessional group of experts to be held at Buenos Aires from 31 August to 4 September 1998. In case the Commission completes its work on the proposed convention, the Congress could function as a platform for discussion of the most viable modalities for implementation of the various provisions of the convention. The Congress may also wish to examine existing international law and legislation that could be of benefit in that regard. At the same time, national legislation, both substantive and procedural, could be analysed to verify its capacity to meet the requirements of such an international instrument.

B. Action against organized transnational crime

23. Practical measures that would help law enforcement officials in preventing and controlling organized transnational crime could be discussed, including international cooperation in the inspection of crime scenes, the gathering of evidence and criminal techniques. Further, methods for gathering and analysing operational data on transnational crime could be developed. The relationship between organized crime and the development of tension and civil strife needs to be examined in order to verify the extent to which organized crime can provoke tension and civil conflicts.

C. Extradition and mutual legal assistance

24. The Congress could facilitate the discussion of problems relating to mutual assistance in criminal cases and in extradition. The model treaties are well-tested instruments of international cooperation and, as such, are part of the wider efforts to prevent and control organized transnational crime and strengthen regional and international cooperation in law enforcement and judicial proceedings. The Congress can benefit from the presence of legal experts and policy makers by conducting a dialogue conducive to the refinement of existing, and the elaboration of new, instruments for cooperation in criminal justice, for example, by consolidating the model treaties into a comprehensive instrument for international cooperation. The feasibility of creating international mechanisms for the settlement of extradition disputes could be explored. Internationally recognized principles embodied in existing conventions could be reviewed. Model legislation on mutual legal assistance could be elaborated, which, together with the model legislation on extradition, could be used as an efficient tool to improve international cooperation in criminal matters. Technical assistance activities in that area, focusing on training and advisory services, could include the promotion of techniques for the upgrading of skills. Further, the Congress could provide an opportunity to explore the feasibility of alternatives to formal extradition by simplifying extradition procedures.

D. Other international cooperation and technical assistance

25. Generally, with regard to technical assistance in promoting efforts to combat organized transnational crime, the Congress should be a propitious occasion for policy makers to identify areas for the elaboration and development of universal legal tools (that is, model laws, declarations and manuals) and of practical strategies to assist requesting countries, particularly developing countries, economies in transition and countries recovering from conflict, in preventing and controlling organized criminal activities. Those instruments should be designed in such a way that they could be implemented worldwide, with the requisite modifications and adaptations. The feasibility of establishing a coordination and cooperation mechanism between the relevant

international organizations and the private sector could also be studied, in order to provide better and more effective technical assistance at reduced costs; to expand the scope and context of technical assistance; to develop uniform criteria for the provision of assistance and the evaluation of its results; and to make the provision of technical assistance more uniform and systematic.

E. Measures against specific forms of crime

1. Terrorism in all its forms

26. Terrorism is a global threat to national and international security, introducing a random violence that challenges the ability of States to protect their citizens. As terrorism transcends national boundaries and changes its patterns and methods of operations, making full use of modern technologies, no region or country remains immune. The General Assembly has made substantial progress in formulating guidelines to promote international cooperation in combating terrorism in all its forms and dimensions. On the basis of such progress and other initiatives undertaken at various levels, the Congress should examine practical ways of strengthening national action and promoting international cooperation, in particular, by establishing close collaborative ties between law enforcement agencies, developing practical arrangements and organizing training courses and seminars on how to deal with specific aspects of terrorism nationally and internationally. The Congress can also provide inputs on how to assist Member States in improving their capabilities to prevent, investigate and effectively respond to terrorist attacks.

2. Money-laundering

27. The Congress could serve as a platform for the discussion of practical measures for the prevention and control of money-laundering. Discussions could be held on areas of technical assistance in support of the implementation of the global programme against money-laundering of the Office for Drug Control and Crime Prevention of the Secretariat (including training courses, advisory services and examples of best practice). Measures required to respond to new developments in money-laundering in the age of high technology could be highlighted, in particular, how the new high technology creates alternatives to, and loopholes for, money-laundering. Related issues that could be discussed in this connection involve collaborative methods for the tracing and seizure of assets, including bank secrecy and international asset-sharing, as well as practical measures, such as the exchange of data, information and experience, to deter, detect and prosecute economic and financial crimes. In addition, other ways of ensuring financial disclosure, transparency and accountability could be discussed.

3. Corruption

28. Regarding corruption, the Congress could provide a forum for discussion on the basis of the International Code of Conduct for Public Officials (General Assembly resolution 51/59, annex), the United Nations Declaration against Corruption and Bribery in International Commercial Transactions (General Assembly resolution 51/191, annex) and the 50 recommendations of the Expert Group Meeting on Corruption, held at Buenos Aires from 17 to 21 March 1997 (E/CN.15/1997/3/Add.1). Modalities of a plan for the practical application of mechanisms against corruption could be discussed. Technical assistance proposals to support the application of those mechanisms, in particular, training courses, advisory services and examples of best practice, could be elaborated. Model regulatory regimes could be developed and banking rules formulated. Legal mechanisms to control overseas corruption, particularly in private business, could be suggested. Administrative and civil remedies as alternatives to criminal sanctions could be considered, in order to relieve the criminal justice system from the burden of corruption cases, reserving penal measures for high-level offenders. The involvement of the public at large could be addressed, for example, through information and awareness-raising campaigns on the negative impact of corruption on the well-being of society and on national development.

Another issue for consideration could be the combating of corruption by criminalizing bribery, as recommended by the General Assembly.

4. Environmental offences

29. In respect of the role of criminal law in the protection of the environment, the presence of policy makers and international experts at the Congress could provide an opportunity to exchange views on the creation of practical mechanisms to ensure that the problem of environmental crime is dealt with in a cohesive manner, so as to avoid cases in which corporations or individuals look for countries with weak or unenforced environmental legislation of which they could take advantage. The creation of an international platform to coordinate action in the fight against environmental crime could be considered. Such a platform would provide an opportunity to exchange information, to carry out crime analyses and to provide for coordinated international criminal legislation on the environment by formulating generally recognized principles that could be embodied in an international convention. The preparation of a manual for law enforcement and customs officers on how to detect and deter the trafficking in hazardous substances, and of a manual for law enforcement officials on how to detect and deter the smuggling of endangered species might be envisaged. The Congress should encourage such initiatives and suggest ways of promoting cooperation on such issues.

5. Trafficking in nuclear substances

30. With regard to trafficking in nuclear substances, including real or purportedly radioactive substances, as well as rare metals and rare earths, policy makers at the Congress could explore the feasibility of undertaking an in-depth analysis of nuclear crime, including issues such as the amount of radioactive material on the market, the availability of weapons-grade fissionable material, where it comes from and whether there is an actual market for it, as well as the use of radioactive material by parties other than Governments.

6. Car theft

31. The Congress will provide an opportunity to examine the progress made in the elaboration of a manual for law enforcement officials on combating car theft, and its use in training courses. A comprehensive worldwide study of that widespread form of crime could be envisaged to complement the findings and recommendations of the meetings held on the subject and to determine the feasibility of establishing mechanisms for coordinated action to combat crime involving motor vehicles.

7. Trafficking in human beings

32. Trafficking in human beings is a very serious problem facing the international community. Currently, such trafficking is considered to be the fastest growing criminal market worldwide. The problem is seen to consist of the following three major components: the illegal smuggling of aliens, sexual slavery of women and children, and economic slavery in all its forms. In assessing effective countermeasures, the Congress may wish to consider recommending the formulation and implementation of technical assistance projects aimed at assisting States in their efforts to respond to this phenomenon.

F. Questions for discussion

33. The regional preparatory meetings may wish to consider the following questions:

(a) In view of the prospective international convention against organized transnational crime, what mechanisms should be envisaged at the national and international levels to give effect to its various provisions?

(b) What measures would be most effective for the United Nations to adopt in responding to the needs of countries for technical assistance in strengthening national capacities for dealing with transnational crime?

(c) How can regional and international cooperation in the field of crime prevention and criminal justice best contribute to combating terrorism?

III. EFFECTIVE CRIME PREVENTION: KEEPING PACE WITH NEW DEVELOPMENTS

34. Over the past two decades, the international criminal justice community has increasingly focused its attention on identifying, developing and evaluating measures to prevent crime. That process, which received fresh impetus in reaction to the contention that "nothing works", has continued and yielded results suggesting that there are some effective crime-prevention measures based on traditional concepts (such as strengthening the role of the family and encouraging formal education). Other innovative measures are based on technological developments that permit the criminal justice community to react in a timely and effective manner to new crime situations. Indeed, especially in the last decade, keeping pace with new developments in crime and its prevention has become a major priority for many Governments and a real challenge to law enforcement and other crime-prevention practitioners.

35. The changing dynamics and patterns of crime have served as a catalyst for the shift in approach. While new information technologies enabling better communication (for law-abiding citizens and offenders alike) are essentially limited to developed countries, the relatively brief period between the ninth and tenth United Nations congresses on the prevention of crime and the treatment of offenders has seen a tremendous expansion in that regard. However, while the proliferation of new information technologies has led to a number of advantages in global communication and cooperation, it has also helped to foster new forms of crime domestically, regionally and internationally.

36. The Economic and Social Council noted those developments in its resolution 1997/33, adopted on the recommendation of the Commission at its sixth session, to which was annexed the text of elements of responsible crime prevention: standards and norms. In section I of that text, it was noted that "the concept of crime prevention should not be limited to conventional forms of crime, ... but should encompass new forms of crime, such as organized crime, terrorism, illegal trafficking in migrants, computer and cybercrimes, environmental crime, corruption and illegal commerce related to the acquisition and development of weapons of mass destruction ... The concept of crime prevention should take into account the growing internationalization of criminal activities between the global economy, advanced technologies and national phenomena of crime, with special consideration for developing countries."

A. Crimes linked to xenophobia, racism and ethnic conflict

37. Among the major concerns, rising xenophobia, racism and intolerance towards different ethnic groups have been viewed as presenting the greatest challenge. The erosion of once rigid borders and systems and the globalization of trade has prompted changes in domestic and international labour markets, with the inevitable migration of people seeking better work and life opportunities. Migration from South to North and migration caused by different levels of socio-economic development have produced problems of crime prevention and control in receiving countries. Great challenges for Governments have emerged with regard to the protection of the rights of immigrants and migrants who, because of their possibly illegal status, may become offenders, but who are more often victims. Xenophobia and racial hatred, including anti-semitism, have fuelled interpersonal and collective violence, while fostering criminal opportunities involving either members of organized crime networks or victims of organized criminals who take advantage of particular groups (for

example, through demands for protection money or through corrupt officials who demand bribes for issuing work and residence permits).

38. The International Conference on Migration and Crime, convened at Courmayeur, Italy, in October 1996 by the International Scientific and Professional Advisory Committee in cooperation with the United Nations and the Government of Italy, analysed various aspects of the relationship between the two phenomena and suggested some parameters for action. The United Nations Crime Prevention and Criminal Justice Programme has addressed both aspects in a number of policy statements and related practical actions aimed at promoting the rule of law, training law enforcement officials and changing public attitudes to promote greater tolerance of multiculturalism and readiness for sound integration. However, the Commission at its sixth session noted that the authorities themselves were often the culprits: "... violence against migrants was becoming an increasingly serious problem ... Crimes were often committed against such persons by immigration authorities. It was recommended that due attention should be paid by States to the prevention and sanctioning of that form of abuse of power. Immigration laws should focus more on the network of criminal organizations involved in trafficking in migrants than on the punishment of migrants with no legal status ... It was pointed out that repatriation procedures should prevent situations that might endanger the integrity, dignity and human rights of migrants."[1]

39. Crime-prevention measures and techniques should include legal, sociopolitical and economic interventions aimed at preventing crimes and abuses linked to xenophobia and racism, including settlement and resettlement programmes for migrants, media campaigns to foster tolerance and multiculturalism, education programmes aimed at preventing aggressive behaviour towards foreign children, ethnic policing and situational prevention of public disorder.

B. New technologies

40. The globalization of communications and improved information management have facilitated new forms of crime, with potentially far-reaching consequences for crime prevention. In the developed world, many individuals use modern information technologies (such as cellular telephones and the Internet) to remain connected to the community and to enhance security. In developing countries, where telephone lines are still largely lacking, tight family control and support still secure a basic feeling of safety, which may, however, weaken as information dissemination expands and reaches that portion of the world's population.

41. At the time of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, a new form of non-custodial sanction, electronic monitoring, was being implemented in several developed countries. Shortly thereafter, situational crime prevention benefiting from further advances in information technologies, including satellite monitoring, closed-circuit television, firearms tracing and ballistics cross-referencing and electronic most-wanted bulletin boards, have been introduced with positive results and potential applications in other parts of the world. A further example is provided by recent developments in the use of DNA evidence, which have helped to convict offenders while allowing a mechanism for establishing innocence during the trial.

42. For example, some jurisdictions in the United States of America have well-established satellite monitoring of offenders serving non-custodial sanctions. Satellite technology has already been applied by the automobile industry to prevent the theft of motor vehicles or facilitate the recovery of stolen vehicles that transmit signals making it possible to determine their location. Further advances have been made in fingerprinting technology, so that it is now possible for a police officer to transmit electronically the image of a fingerprint to a central database for processing, and to facilitate the possible arrest or detention of the offender. Highly advanced marking systems have been introduced in the production of currency, making counterfeiting extremely difficult. Other technological advances are on the way to facilitate crime prevention.

43. As such information technologies are perfected and made available to a greater number of countries, their widespread use will follow. But there remain basic questions of a legal, research or programme planning nature, some of them having been noted by the Ninth Congress and by the Commission. Many other questions still have to be discussed, however, including issues of intrusion, protection of privacy and other rights, as well as the cost of new technologies versus their purported benefits.

C. Evaluation of crime-prevention programmes

44. In order to determine the effectiveness of crime-prevention measures, their evaluation must lie at the core of the discussions at the Tenth Congress. In several countries, State agencies and other actors that have implemented crime-prevention programmes have developed sophisticated methods for evaluating the effectiveness of the strategies adopted. Some of them rely on the success or failure rate—percentage of recidivists—after controlling for a possible displacement effect. Other means of evaluation include the calculation of potential savings made against the financial investment in a crime-prevention programme.

45. Such methods may perhaps not be appealing to many crime-prevention practitioners. The effectiveness of crime-prevention programmes is evaluated not only statistically, but also often in qualitative terms, as reflected in the reduction of fear and the lower perception of risk among the citizenry, as well as in the minimization of the intrusion caused by crime-prevention strategies into democratic freedoms. Careful analysis of new technologies in fighting crime must be subjected to the same stringent evaluations as those applied to other social programmes, such as vaccination campaigns or the approval of new medications.

46. At the international level, the question of effectiveness is even more problematic than at the domestic level because of the complex nature of cross-border criminality. In its resolution 1997/33, the Council noted the need to extend the concept of crime prevention to organized crime, terrorism, illegal trafficking in migrants, computer crime and cybercrimes, environmental crime, corruption and illegal commerce related to the acquisition and development of weapons of mass destruction. It also observed that the concept of crime prevention should take into account the growing internationalization of criminal activities while giving special consideration to the needs and concerns of developing countries.

47. Measuring the effectiveness of crime prevention in a constantly evolving and mutable environment will be a great challenge to the international criminal justice community. The sharing and exchange of information between States and within the international criminal justice community is an essential step in building effective crime-prevention strategies based on a comparative perspective.

D. Questions for discussion

48. The regional preparatory meetings may wish to consider the following questions:

(a) Are criminal justice statistics adequately reflecting crimes related to xenophobia, racism and ethnic conflict, including the proportion of foreign offenders or victims involved in crime? What measures are taken to use statistics on crime control and its prevention as a mechanism for informing public opinion? What programmes have been instituted for the training of border officials in humane and effective immigration procedures and policies? What measures and actions have been taken by law enforcement agencies to reduce violence against migrants and ethnic populations? What effects have community policing strategies had in reducing ethnic violence?

(b) How can new technologies assist in crime prevention and law enforcement? For example, what are the effects of electronic fingerprinting on crime detection? Is it accepted as evidence by courts? What role does videoconferencing have to play? How does computer mapping of the incidence of crime influence police work?

How does satellite technology assist in the investigation of domestic and transnational crime? How do new developments in firearms tracing and ballistics contribute to better crime investigation and prosecution of violent crime and in the illicit trafficking in firearms? How have DNA identification techniques changed police work?

(c) What are the implications of the new technologies, including electronic surveillance, for humane and efficient crime control and its prevention? What legal measures have been taken or may still be required to strengthen the right to privacy?

(d) How can crime prevention strategies, including their evaluation, be improved in order to achieve a more effective criminal policy?

IV. OFFENDERS AND VICTIMS: ACCOUNTABILITY AND FAIRNESS IN THE JUSTICE PROCESS

49. Criminal justice systems hold the offenders accountable for their criminal behaviour with consequences ranging from punishment, including the deprivation of liberty, to restorative justice approaches, which focus on conflict resolution.

50. In addition to the well-known problems associated with imprisonment, such as prison overcrowding and construction, high maintenance and personnel costs in custodial institutions, which have been discussed at length during previous United Nations congresses on the prevention of crime and the treatment of offenders, and problems in professional prison management, the criminal justice systems of many countries still focus on the public reaction to crime rather than on ensuring justice for the victim and the offender. The victim is often not adequately involved in the criminal proceedings and has to rely on outside assistance to redress the harm suffered.

51. Restorative justice approaches offer a framework for the re-establishment of social harmony through reconciliation between the offender and the victim, both inside and outside the criminal justice system, by reparation and mediation. It emphasizes conflict resolution between the victim, the offender and the community, and focuses on meeting needs and healing rather than on punitive reactions by the State.

52. To develop such a concept and facilitate the exchange of experience between States, the topic has been placed on the agenda of the Tenth Congress, on the recommendation of the Commission.

A. Restorative justice

53. In implementing restorative justice measures, it is essential that an appropriate balance between the needs and interests of the victim and the rights of the offender be ensured. Since restorative justice measures may help to overcome some of the problems associated with imprisonment, their enhanced use ought to be promoted, as appropriate, at the national level. At the international and regional levels, information on non-punitive and non-custodial measures should be provided, with a view to raising their acceptability by society, including criminal justice personnel, as such measures may be a sufficient response to crime in many instances.

54. The Tenth Congress may wish to discuss to what extent restorative justice approaches may be applied at various levels, with or without recourse to the criminal justice system, at the pre-trial stage (that is, investigation and prosecution) and during the trial and post-trial stages.

B. Restorative justice measures in the criminal justice process

55. Restorative justice measures, including mediation, are already applied at the initial stages of investigation in a number of countries, allowing for the reparation of damages and provision of compensation to the victim prior to trial. For that purpose, police officers are able, in appropriate cases, to initiate the application of victim-offender reconciliation measures, with monitoring mechanisms in place to avoid the danger of corruption and bribery. The application of restorative justice measures, particularly in cases of juvenile delinquency, requires police officers to provide complete information on such measures and programmes to both the victim and the offender at an early stage of the proceedings. Restorative justice measures are not to be limited to only petty offences. Restitution and victim-offender reconciliation are considered important factors in re-establishing social peace when dealing with violent crimes.

56. The responsibility of the community for solving conflicts linked to crime should be emphasized. While civil-law approaches designed to ensure justice, repair damage and provide restitution or compensation to the victim may be strengthened, conflict resolution should not become private business, but rather should proceed in the context of established alternatives to regular criminal proceedings. Such diversion away from the formal system into mediation and other community-based programmes can prove to be useful and adequate.

57. When carrying out restorative justice measures, the mediator ensures respect for the rule of law (including the principle of proportionality), as well as the protection of the rights of the offender and of the interests of the victim, bearing in mind that the two are not mutually exclusive: protection of the victim does not necessarily result in restrictions of the rights of the offender. Both the victim and the offender should have access to, *inter alia*, free interpretation, medical care and, when applicable, legal representation. Recently, in some countries, measures have been taken with a view to strengthening restorative justice in rural and urban areas, including improving professionalism in conflict resolution, both inside and outside the criminal justice systems.

58. Community-based and problem-solving policing, which are more sensitive to the pressing needs of the victim, need to be encouraged in order to avoid the risks of double victimization during the investigation through, for example, insensitive treatment or interviews. This is of particular importance when dealing with victims of violent crimes, for which special police investigation training is necessary. Investigation of violent crimes, particularly against women and children, also requires sensitivity, including gender and children perspectives.

59. Effective conflict resolution may obviate the need for a formal prosecution, particularly when the successful application of restorative justice measures supports the prognosis that the offender will not commit further crimes. Investigating judges and prosecutors could encourage the offender and the victim to progressively move towards reconciliation, taking into account that the re-establishment of peace among the victim, the offender and the community may require a process of medium- or even long-term duration. The concept of restorative justice may result in a broadened scope of the function of a witness who, at the same time, is a victim of a crime. In the preparation for the trial hearing, the investigating judge or prosecutor should ensure adequate access to the court for the victim. The investigating judge and prosecutor should also provide the victim with all necessary information on his or her rights, as well as on existing victim assistance and compensation programmes and other services, such as medical treatment and protection in safe havens, for example, in women's shelters.

60. The implementation of restorative justice programmes should help to reduce heavy caseloads, and ensure that criminal justice systems deal only with cases where serious formal intervention by the system is required. The administration of criminal justice can thus concentrate on a limited number of cases, in which the suspects enjoy the benefits derived from the fundamental principles of a fair trial rather than being deprived of their freedom in pre-trial detention and, after months of detention, being released without a formal (trial) hearing.

61. Closer involvement of the community in criminal justice proceedings may have a direct impact on criminal justice policies. While a few criminal cases attract public attention, the vast majority of trials do not. The improved role of the media in reporting on trial hearings might be considered, with a view to: informing the public about the criminal justice system at work; raising public awareness of society's stake in effective crime prevention; and, at the same time, promoting respect for both the basic rights of the offender in criminal justice proceedings and the interests of the victim in the criminal justice system. However, some media reports are marked by sensationalism and a misperception of how the justice system operates. The responsibility of the media needs to be stressed in that connection, while, concurrently, public relations could be strengthened by the court administration.

62. Restorative justice measures may also be taken into consideration within the formal trial. In so-called adhesion proceedings, the claim of the victim for damages or reimbursement of expenses can be joined to the case brought by the State. The penal sentence *per se* can then include a ruling that would give the victim the legal right to judicial relief without having to sue the offender as plaintiff in a separate civil-law proceeding. At the same time, the obligation to compensate the victim may be taken into account, as part of the punishment, when deciding on the penalty for the offender. Yet another possibility could be a form of consensus sentencing as a useful means of promoting a restorative approach. Those processes are often in line with traditional forms of justice and conflict resolution in many countries.

63. When deliberating on the penalty, the court may also consider compensation as a mitigating factor. That would involve cases in which the offender has compensated the victim prior to trial or has started to do so.

64. Imprisonment usually creates a situation in which offenders are incapacitated and thereby unable to compensate victims, especially when, as a result of the deprivation of liberty, they are cut off from the outside world and gainful work opportunities. In order to allow sentenced offenders to provide reparation for victims, a range of measures can be applied, including probation and work release, as well as community service, bearing in mind that non-custodial measures also help to alleviate prison overcrowding.

65. Another alternative to custody is electronic surveillance. While the installation of such surveillance systems might be costly, they will reduce the maintenance costs of incarceration in the long run, as well as helping to maintain the family life of the offender and community links and opportunities for gainful work. However, the use of electronic surveillance has to be carefully examined for possible violations of human rights in order to ensure that only those offenders are subject to surveillance who otherwise would be imprisoned, thereby avoiding so-called net-widening.

C. Fairness to victims and offenders

66. With regard to the deprivation of liberty, imprisonment should not deprive the offenders of the opportunity to provide reparation to victims. Provisions for meaningful and adequate remunerated work should rank high on the list of priorities of a prison administration, with potential employers playing a constructive role by offering offenders and ex-offenders appropriate possibilities for work.

67. In many cases, the sense of justice of the offender needs to be stimulated, including his or her own accountability for the crime committed. However, the sense of fairness of the offender can only be strengthened if the prison administration does justice to the offender, respecting the principle that prisoners are incarcerated as, but not for, punishment. Consequently, poor prison conditions that result in inhumane or degrading treatment are bound to undermine the sense of justice of the offender and reduce the motivation to change.

68. A restorative justice approach, which also aims at preventing recidivism, requires strengthened efforts to provide adequate mental and physical treatment for offenders and pre-release assistance programmes in

preparation for the reintegration of the offender into society. That includes job-related training programmes in prisons, with a view to securing the economic independence of prisoners once released. As many countries face high unemployment rates, treatment programmes should also aim at providing strategies for ex-offenders to cope with unemployment and to enhance their skills in a competitive job market.

69. Community involvement in custodial institutions is an important means of ensuring that prisoners maintain contacts with the outside world. In many institutions, prison officers believe that such contacts may undermine or endanger prison security and order. There are, however, positive examples which show that prison visitors, religious groups and other relevant organizations can assist in meeting the goals of imprisonment, helping offenders to lead law-abiding lives after their release. Victims wishing to visit offenders in prison could be assisted by prison professionals in establishing a basis for victim-offender reconciliation.

70. Attention should be devoted to promoting systematic efforts to strengthen regional and international cooperation in such a process. Restorative justice measures and the strengthening of restorative processes could be part of broader development programmes, taking into account the special needs of developing countries and their indigenous traditions, which have relied on customary forms of restorative justice. Traditional conflict resolution practices may offer advantages over other methods in the context of efforts to build upon such traditions to develop an effective capacity to deal with violence, crime and conflicts in society.

71. Restorative justice policies offer several comparative advantages. Their application would allow the criminal justice system to be used more efficiently, concentrating its efforts and limited resources on more serious offences, thus contributing to reducing the prison population, easing prison overcrowding and, consequently, diminishing the maintenance costs for prisons. By allowing offenders to stay with their families and continue their social and professional activities, it might be possible to help the offender to readjust to society and to avoid the economic hardship posed for single-parent families. The burden of assisting the offenders and their families would then not fall on the social security schemes, where they exist, or on the informal social network, such as relatives, neighbours and friends. Moreover, the working potential of offenders could be utilized in the public and private sectors, for instance, by community service and social work initiatives. In the long run, the use of restorative justice measures would be of double benefit for the development process of a country: by avoiding the disruption of valuable human and material resources; and by stimulating economically productive activities. A properly functioning criminal justice system and the use of fair restorative justice measures would also contribute to increased confidence in the stability and efficiency of the criminal justice system and an enhanced climate of security, which may be a decisive element in spurring foreign investment and international technical assistance.

72. A balanced approach offers the best prospects, ensuring that the rights of the offender, as recognized in international and regional instruments (that is, the Standard Minimum Rules for the Treatment of Prisoners[2] and the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (General Assembly resolution 45/110, annex)), and the rights of the victims, as highlighted and provided for in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex), are adequately respected.

73. A guide for policy makers on the implementation of the Declaration and a handbook on justice for victims, concerning the use and application of the Declaration, have recently been drawn up by the Centre for International Crime Prevention to assist in developing victim-sensitive policies, procedures and protocols and in executing victim services programmes. Accordingly, wide dissemination of both the guide and the handbook should be strongly promoted. There is a need to strengthen technical assistance activities, in particular, the development of training programmes on the use and application of the Declaration. The wide dissemination of the handbook for practitioners and the guide for policy makers could be part of a general process of developing professional training and techniques for public education on the need for restorative justice for the victim and

offender alike. Other techniques would include wider media involvement and public relations campaigns based on ethical codes of practice and using new information technologies, such as multimedia presentations and the Internet.

D. International cooperation on restorative justice

74. Attention should also be given to the provision of appropriate international recourse and redress for victims where national channels may be insufficient, for instance, in cases involving transnational crime. The following could be included among the many proposals that may be considered: the possible appointment of an international ombudsman to assist in obtaining recourse and redress at the international level; and the possible expansion of existing human rights complaint procedures with a view to restoring impeded rights or otherwise obtaining some kind of redress. A positive development has been the establishment of victim and witness units in the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandese Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994. The establishment of such a unit within the structure of the future International Criminal Court has also been proposed. The Tenth Congress may wish to make suggestions in order to support the recommendations of the eighth and ninth congresses and of expert group meetings concerning compensation to victims of crime and abuse of power, including the proposed establishment of an international fund for crime victims.

75. At the regional level, victim policies formulated within the framework of existing structures of cooperation, for example the Council of Europe and the regional courts of human rights (such as the Inter-American Court of Human Rights) could be adopted in other regional initiatives. In that context, the regional institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network should be further strengthened in their victim-related activities at the regional and subregional level. Those activities could include comparative surveys and evaluation studies, as well as model projects and demonstration schemes for technical assistance. Emphasis should also be placed on the importance of cooperation with non-governmental organizations involved in such activities.

76. The Tenth Congress could provide a forum to facilitate the exchange of information and experiences on different restorative justice measures that have proved successful, with emphasis on how a proper balance between the interests of victims and the rights of offenders can be ensured. Information on promising practices and legislation on victim-related issues should continue to be included in the database and clearing-house efforts to provide a continuing service for both government agencies and non-governmental organizations, including victim groups.

E. Questions for discussion

77. The regional preparatory meetings may wish to consider the following questions:

(a) What practical measures and programmes have been implemented by States to incorporate the principles of restorative justice into the criminal justice system at its various stages, including the pretrial, trial and post-trial stages?

(b) What have been the limitations of implementing the means of restorative justice in the criminal justice system? In what circumstances has their implementation been found to be inappropriate or unsuccessful?

What basic principles should govern the implementation of restorative justice processes so as to preserve the balance between the rights and interests of the victim, the offender and society?

(c) What can be done at the international and regional levels regarding the promotion of restorative justice, including technical assistance to ensure greater fairness and accountability within the criminal justice system?

Notes

[1]*Official Records of the Economic and Social Council, 1997, Supplement No. 10* (E/1997/30), para. 75.

[2]See *Human Rights: A Compilation of International Instruments* (United Nations publication, Sales No. E.94.XIV.1), vol. I, part 1, sect. H.